No. 5, Original

Supreme Court U. S.
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IN THE

Supreme Court of the United States

October Term, 1977

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA.

Joint Appendix for
Proposed Third Supplemental Decree.

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IN THE

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UNITED STATES OF AMERICA,

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Joint Appendix for
Proposed Third Supplemental Decree.

Stipulations.

The following stipulations have been reached and agreed upon by the parties through their respective counsel:

1. If the phrase "the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands" referred to in Presidential Proclamation No. 2825, 63 Stat. 1258 (1949) includes the submerged lands and waters within the one-mile belt, then it is stipulated that the United States "presently and actually occupied" the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands for purposes of Section 5 of the Submerged Lands Act of 1953, 43 U.S.C. § 1313. This stipulation is intended only to eliminate any dispute as to the United States having "presently and actually occupied" the areas in question. The stipulation is not intended to resolve any other legal questions arising under the Submerged Lands Act of 1953 and its application to this case.

2. It is stipulated that the documents set forth in this appendix are genuine and may be received in evidence for all purposes relevant to this proceeding for entry of a third supplemental decree in *United States v. California*, No. 5, Original.

3. It is stipulated that the acreage figures shown on the diagram accompanying Presidential Proclamation No. 2825 are figures which approximate the total surface area of Anacapa and Santa Barbara Islands and one nautical mile of waters surrounding those islands. This stipulation is not intended to foreclose any legal argument by either party as to the significance of this fact in interpreting the 1949 Presidential Proclamation.

4. Each document which bears an addressee was in fact sent to the addressee in the ordinary course of business by the signator of the document.

DOCUMENT 1

FORT JEFFERSON NATIONAL MONUMENT—FLORIDA

January 4, 1935

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Fort Jefferson National Monument, Fla. Preamble.

WHEREAS it appears that the public interest would be promoted by revoking Executive Order No. 779, of April 6, 1908, creating the Dry Tortugas Keys Reservation; and by revoking (1) the Executive order of September 17, 1845, creating the Dry Tortugas Military Reservation, insofar as it relates to the Dry Tortugas group of islands, and (2) Executive Order No. 1613, of September 23, 1912, insofar as it closes the harbor of Tortugas, Florida, to navigation, and (3) Executive Order No. 5281, of February 17, 1930, insofar as it forbids air navigation over the said harbor; and by including the Dry Tortugas group of islands within a national monument for the preservation of Fort Jefferson and the historic and educational interest contained in such area:

Revoking designated Executive orders relating to the Dry Tortugas group of islands.

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do hereby revoke the aforesaid Executive Order No. 779, of April 6, 1908; and I do hereby revoke (1) the aforesaid Executive order of September 17, 1845, insofar as it relates to the Dry Tortugas group of islands, and (2) Executive Order No. 1613, of February 23, 1912, insofar as it closes the harbor of Tortugas, Florida, to navigation, and (3) Executive Order No. 5281, of February 17, 1930, insofar as it forbids air navigation over said harbor.

National monument set apart.
Vol. 34, p. 225.
U. S. C., p. 651.

And under and by virtue of the authority vested in me by section 2 of the act of June 8, 1906 (34 Stat. 225; U. S. C., title 16, sec. 431), I do proclaim that, subject to all existing rights and to the existing reservation for lighthouse purposes affecting a portion thereof, the area indicated on the diagram hereto attached and forming a part hereof is hereby reserved from all forms of appropriation under the public-land laws and set apart as the Fort Jefferson National Monument.

Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy, deface, or remove any feature of this monument and not to locate or settle upon any of the lands reserved by this proclamation. Reserved from settlement.

The Director of the National Park Service, under the direction of the Secretary of the Interior, shall have the supervision, management, and control of this monument as provided in the act of Congress entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (ch. 408, 39 Stat. 535; U. S. C., title 16, secs. 1 and 2), and acts additional thereto or amendatory thereof. Supervision. Vol. 39, p. 535. U. S. C., p. 881.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

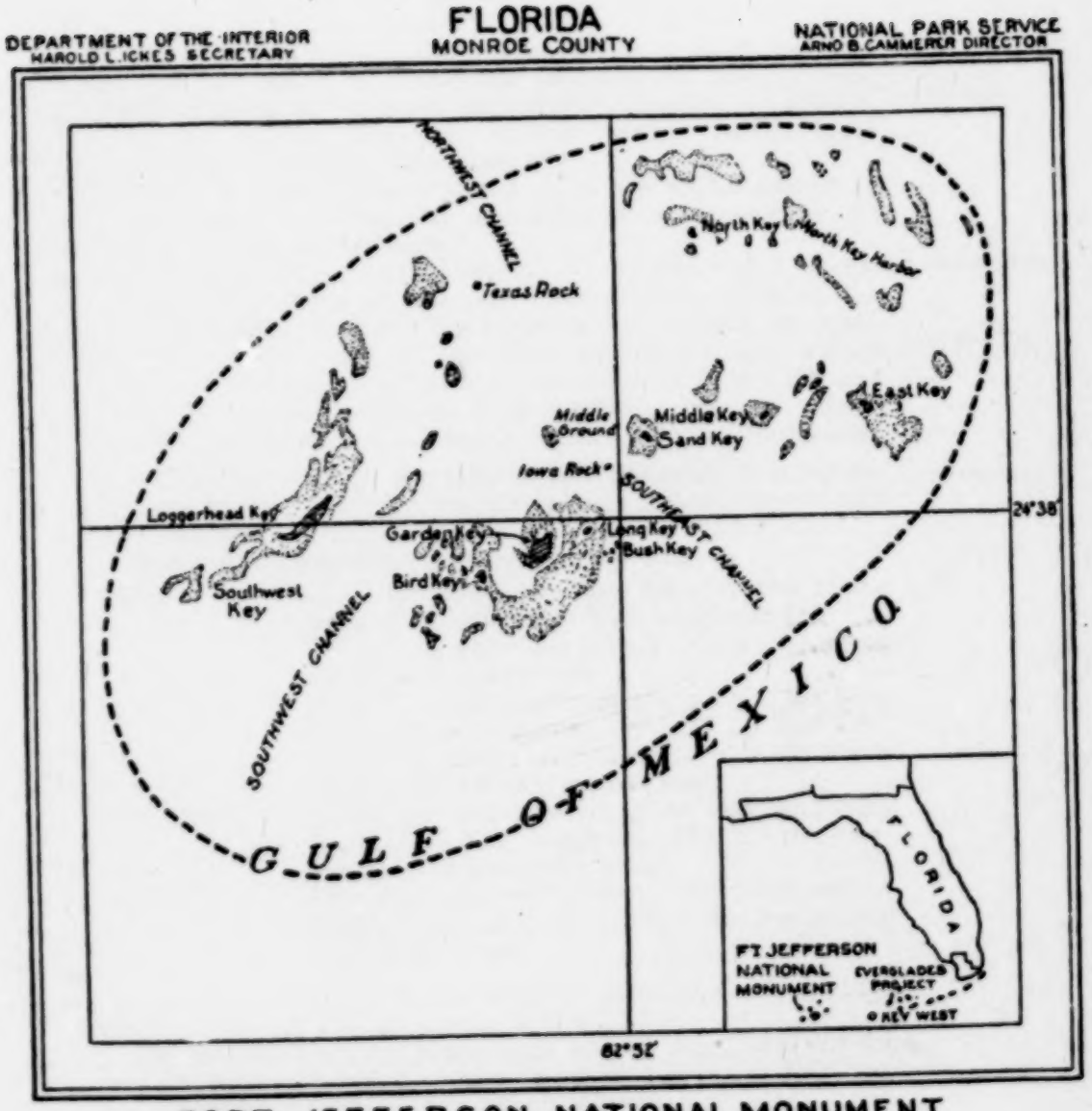
DONE at the city of Washington this fourth of January, in the year of our Lord nineteen hundred and thirty-five, and of the Independence of the United States of America the one hundred and fifty-ninth.

[SEAL]

FRANKLIN D ROOSEVELT

By the President:
CORDELL HULL
Secretary of State.

[No. 2112]



FORT JEFFERSON NATIONAL MONUMENT

3431—1

DOCUMENT 2

CHANNEL ISLANDS NATIONAL MONUMENT—CALIFORNIA

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

April 26, 1938
[No. 2281]

A PROCLAMATION

Channel Islands National Monument, Calif.
Preamble.

WHEREAS certain public islands lying off the coast of Southern California contain fossils of Pleistocene elephants and ancient trees, and furnish noteworthy examples of ancient volcanism, deposition, and active sea erosion, and have situated thereon various other objects of geological and scientific interest; and

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument, to be known as the Channel Islands National Monument:

Establishment.

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, under and by virtue of the authority vested in me by section 2 of the act of June 8, 1906, ch. 3060, 34 Stat. 225 (U. S. C., title 16, sec. 431), do proclaim that, subject to all valid existing rights, the following-described lands in California are hereby reserved from all forms of appropriation under the public-land laws and set apart as the Channel Islands National Monument:

34 Stat. 225.
16 U. S. C. § 431.

Description.

All of that part of the Anacapa Island Lighthouse Reservation, a group of three islets known as Anacapa Island, approximate area 700 acres, reserved by Executive Order of September 11, 1854, except the following described parcels of land:

Parcel I. All of the land comprising the east islet of the group lying eastward of West Longitude 119° 22′ 38″ (North American Datum 1927) comprising 106.88 acres more or less.

Parcel II. All of the land comprising the middle islet lying between West Longitude 119° 23′ 21″ and 119° 23′ 30″ and south of Latitude 34° 00′ 14″ North comprising 7.68 acres more or less.

Parcel III. All of the land comprising the west islet lying westward of West Longitude 119° 26′ 10″ comprising 46.72 acres more or less.

Parcel IV. The entire area of Cat Rock, which lies off the southern extremity of the west islet comprising .5 acre more or less.

The area reserved for the national monument on Anacapa Island contains 538.22 acres more or less.

All of Santa Barbara Island, area 638.72 acres, reserved for lighthouse purposes by Executive Order of August 24, 1905, excepting the following-described parcels of land:

Parcel I. Beginning at a point in the high water line at the northwesterly side of the island which bears 258° 50′ true azimuth from north, a distance of 525 feet more or less from the center of Santa Barbara Island North End Light tower; thence 110° true azimuth from north a distance of 1000 feet more or less to the intersection with the high water line

at the northeasterly side of the island; thence along the high water line around the northerly point of the island to the point of beginning comprising 16 acres more or less.

Parcel II. Beginning at a point in the high water line at the southwesterly side of the island which bears 223° true azimuth from north a distance of 300 feet more or less from the center of Santa Barbara Island South End Light tower; thence 90° true azimuth from north a distance of 800 feet to a point; thence 330° 30′ true azimuth from north a distance of 2150 feet to a point; thence 270° true azimuth from north a distance of 800 feet more or less to the intersection with the high water line at the westerly side of the island; thence southerly along the high water line to the point of beginning comprising 40.96 acres more or less.

The area reserved for the national monument on Santa Barbara Island contains 581.76 acres more or less.

Former reservations superseded. The reservation made by this proclamation supersedes as to any of the above-described lands affected thereby the withdrawal made by Executive Orders of September 11, 1854, January 26, 1867, and August 24, 1905. However, the lands excepted in the above descriptions shall remain under the jurisdiction of the Bureau of Lighthouses of the Department of Commerce, as provided by the Executive orders referred to. The Bureau of Lighthouses of the Department of Commerce shall have the right of ingress and egress as to any part of Santa Barbara Island for the purpose of transporting all necessary equipment for servicing the established lights.

Jurisdiction over lands.

Bureau of Lighthouses, right of ingress and egress.

Reservation from settlement, etc. Warning is hereby expressly given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument, and not to locate or settle upon any of the lands thereof.

Supervision. The Director of the National Park Service, under the direction of the Secretary of the Interior, shall have the supervision, management, and control of this monument as provided in the act of Congress entitled "An act to establish a National Park Service, and for other purposes," approved August 25, 1916, 39 Stat. 535 (U. S. C., title 16, secs. 1 and 2), and acts supplementary thereto or amendatory thereof.

39 Stat. 535. 16 U. S. C. §§ 1, 2.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 26 day of April in the year of our Lord nineteen hundred and thirty-eight, and of the [SEAL] Independence of the United States of America the one hundred and sixty-second.

FRANKLIN D ROOSEVELT

By the President:
SUMNER WELLES
Acting Secretary of State.

DOCUMENT 3

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Sequoia National Park
Sequoia National Park, Calif.

May 29, 1940

MEMORANDUM FOR THE DIRECTOR:

In connection with a report I am now preparing on the Channel Islands National Monument, I need some information as to just how far out to sea our authority in this area extends. In other words, do we have any jurisdiction over the coastal waters of these islands? If we do not have such jurisdiction, do you think it would be possible to extend the monument boundaries so that they would include one-half or a mile ocean strip around the entire group?

In addition to the islands specifically described as being included in the monument, there are some smaller islands or perhaps rocky promontories standing off the coast which are very important bird nesting areas, and I wonder if these should be considered part of the monument, or if we should attempt to have the original proclamation revised so as to include them as well as the ocean waters mentioned above.

/s/ E. T. Scoyen
E. T. Scoyen
Superintendent

DOCUMENT 4

UNITED STATES
DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
Washington

January 30, 1941.

MEMORANDUM for Mr. Ben Thompson.

Attention: Mr. Little.

Reference is to Mr. Collins' suggestion that you be supplied with a wildlife comment regarding Mr. Moskey's memorandum to Mr. Wirth of January 17, on protection of natural features or plants or animals in the Channel Islands National Monument.

The outlying rocks and islets in the neighborhood of the main islands should certainly be designated as a part of the National Monument. Such important wildlife species as the sea otter, sea elephants, and fur seals, which badly need protection, prefer such places to the shores of larger islands. Frequently animals like these may be seen resting on bits of rock that barely offer support and over which the sea may break. Therefore, such protection as the National Monument can offer should be extended as widely as possible.

Unfortunately, it is understood that the Monument can not be extended to cover the actual surface of the surrounding ocean, although this too would be desirable for protection of these marine mammals.

/s/ Victor H. Cahalane
Victor H. Cahalane,
In Charge,
Section on National Park Wildlife.

DOCUMENT 5

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Sequoia National Park
Sequoia National Park, Calif.

April 1, 1941

A. Brazier Howell, Executive Secretary,
Council for the Conservation of Whales,
American Society of Mammalogists,
Johns Hopkins Medical School
Baltimore, Maryland.

Dear. Mr. Howell:

I have your letter of March 19, with reference to conditions on the Channel Islands National Monument.

At the present time this Service has control of only a very small part of the Channel Islands group, consisting of Santa Barbara Island and the Anacapa Group about forty miles to the north. The other islands are in private ownership or have been reserved for use by the Army or the Navy.

At Santa Barbara Island we have had reports and observations which indicate that the elephant seal has taken up his residence there. An inspection party from this park observed seven of these large mammals, and scientific societies operating expeditions out of Los Angeles have also reported their occurrence. The Los Angeles Museum has reported one sea otter in the vicinity of Santa Barbara Island.

At the present time no funds are allotted for patrol or protection of these islands, although we do have some sort of agreement with the Coast Guard that they will look out for the area. In the near future we intend to assign a man to Santa Barbara Island principally to try and reduce the population of wild house cats which infest this island and take a great toll of the bird life. However, he will no doubt make further observations with reference to the elephant and fur seals, although none of the latter has been reported at this island so far as I know, and also the sea otter.

Our principal difficulty from a protection standpoint arises in the situation that we are able to give protection to these animals only as long as they are on our beaches; the moment they slip off into the water we lose control over them. We have had, and probably will continue to have, close cooperation with the State of California in protecting these rare species after they enter the sea. In any event, there is definite evidence that the sea life which you mention, except for the fur seal, is trying to establish itself on Santa Barbara Island.

Sincerely yours,
E. T. Scoyen
Superintendent

CC: Director
Region IV

DOCUMENT 6

November 15, 1941.

MEMORANDUM for Mr. Ben Thompson, Room 5213.

Mr. Drury recently discussed with me the problem of protection of seals, sea lions, and sea elephants at the Channel Islands National Monument. Superintendent White's statement in his memorandum of October 29 that "the chief protection needed is in the waters adjoining the islands" is supported by a number of authorities within and without the National Park Service. From a perusal of the files it is not apparent that the possibility of extending the boundaries of the National Monument to include the surface of the adjacent ocean has ever been considered. It would seem that the boundaries of the Fort Jefferson National Monument which extend a considerable distance from the high and low tide marks of the Dry Tortugas Islands would be a precedent.

Victor H. Cahalane,
In Charge,
Section on National Park Wildlife.

DOCUMENT 7

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Chicago, Illinois

April 10, 1946.

MEMORANDUM for the Files. Comment on Channel Islands.

The Channel Islands are rather bleak in their general aspect. They will never be known for outstanding scenic beauty.

I understand the ravines that have had some protection from grazing contain some botanical species of the redwood age that are now extinct on the mainland.

The ocean life is spectacular; the underwater world is the big show along with that which lives at the water's edge.

The reservation should extend off shore to protect the underwater life.

The monument is on several islands. Considerable land acquisition will be necessary for proper protection and operation.

My impression is that there will be little appeal for overnight facilities. These should be of the primitive type of an outpost. A trip to the islands is primarily an exploration trip on a boat: make a landing for a few hours and go on. Such trips can be made from the coast at Santa Barbara and from San Pedro and Catalina.

If a reasonable acreage could be obtained on Catalina, say near the isthmus at the northern end of

the island, the National Park Service could have its museum and information facilities there and tell the Channel Island story to larger numbers of people. A boat tour could be made by those who could afford it and who were truly interested, to the other islands to see nature's big underwater show. Those who are only casually interested, or could only afford the Catalina Island trip, could learn a good deal at the Catalina base. Furthermore, Catalina has a good exhibit itself that has been damaged but not destroyed. By using it to tell the story to crowds, we can leave unspoiled other islands for observation.

Furthermore, Catalina and Santa Barbara can furnish the hotels and other facilities. Let these be the Yosemite Valley floor and the other islands the back country.

(SGD.) THOS. C. VINT
Chief Landscape Architect.

DOCUMENT 8

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Washington

May 31, 1946.

To: Mr. Richey.

From: Mr. Price.

I have received your memorandum of April 12, requesting advice as to the extent of Federal jurisdiction into the waters adjacent to Channel Islands National Monument and the rocks and islands involved in Recreational Withdrawal No. 51. This information is requested in connection with the proposed plan of the Fish and Game Commission of the State of California to reduce the sea lion population in this general area.

The general jurisdictional status of these lands and waters may be described as follows:

1. *Channel Islands National Monument.* Channel Islands National Monument was established pursuant to Proclamation of April 26, 1938, issued pursuant to Section 2 of the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431). While the proclamation is not entirely specific on the point, I believe that it should be construed to grant administrative jurisdiction to the National Park Service with respect to the lands described therein only to high water mark. This is indicated by the fact that the description of Santa Barbara Island contained in the proclamation specifically fixes the high water line as the boundary and by the fact that the proclamation refers only to "land" in describing the other islands embraced in the Monument. Since this is the case, the Service has no jurisdiction over the waters adjacent to Channel Islands National Monument.

Whether there is Federal jurisdiction over these waters, apart from that of the National Park Service, involves the question of Federal ownership of submerged coastal lands. This question is the one that is present in the California submerged oil lands dispute. A case based on this precise question is now before the Supreme Court of the United States. Any opinion as to Federal ownership, or jurisdiction, must be reversed until this case has been decided.

2. *Rocks and islands off Point Lobos, California.* The National Park Service possesses no administrative jurisdiction with respect to these Federal lands and the waters adjacent to them. It appears that they were reserved pursuant to Recreational Withdrawal No. 51 and leased to the State of California for park purposes in connection with the Point Lobos State Park. The extent of Federal jurisdiction with respect to these lands which remains, if any, depends on the terms of the lease arrangement with the State. We have been unable to find copies of the lease, but assume that information is available in the General Land Office. If it is desired to pursue this question further, we shall be glad to request the General Land Office to send us a copy of the lease.

Federal jurisdiction over the waters adjacent to the rocks and islands off Point Lobos involves the same considerations as those described for the waters adjoining Channel Islands National Monument. For this reason, a determination of this question also must be reserved, pending a decision in the Supreme Court case.

(SGD) JACKSON E. PRICE
Chief Counsel.

DOCUMENT 9

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Region Four
San Francisco 5, California
601 Sheldon Building

March 24, 1947.

MEMORANDUM for the Regional Director, Region Four.

In a memorandum of March 3, the Regional Chief of Lands requests the comment of the Division of Natural History regarding the existing boundaries of Channel Islands National Monument, with special reference to "Gull Island." Studies of this area have been made in previous years and the subject has been discussed with the Regional Naturalist, who concurs in the present comment.

As stated in the above mentioned memorandum of March 3, "Gull Island" is about 2,000 feet from Santa Barbara Island, and is a detached fragment of the latter. Its exclusion from the proclamation describing the boundaries of Channel Islands National Monument appears to have been wholly unintentional, and a result of the wording of the proclamation, rather than the original intent of the investigators of the area, or those who framed the proclamation.

Actually, "Gull Island" has unique features which render its inclusion within the Monument unusually important. The reason for its importance is that neither cats, rabbits, nor domestic sheep, which in times past have ravaged the main island, appear ever to have

reached "Gull Island." Consequently, the latter now constitutes the only remnant of Santa Barbara Island where some of the murrelots remain that once nested in great colonies in burrows on Santa Barbara Island proper. Similarly, it is believed that exotic weeds, which overran the main island during the years that sheep grazed there, are absent from "Gull Island," and that the original island flora has been undisturbed by sheep or domestic rabbits.

"Gull Island" can be reached by a small boat, though with considerable difficulty. In addition to its very great scientific value based on the above-described conditions, it is a spectacular bit of wild marine landscape like the off-shore rocks on the Oregon Coast. Another important reason for including it in the Channel Islands National Monument would be to prevent its use as a vantage point from which commercial fishermen might shoot sea lions in the water adjacent to the main Santa Barbara Island.

An amendment of the wording of the proclamation to include this natural unit of Santa Barbara Island is urgently needed.

(SGD) LOWELL SUMNER
Lowell Sumner,
Biologist.

DOCUMENT 10

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Region Four
San Francisco 5, California
601 Sheldon Building

April 8, 1947.

MEMORANDUM for the Superintendent, Sequoia-Kings Canyon.

Reference is made to our memorandum of March 17 to the Director, submitting Boundary Status Report for the Channel Islands National Monument. That report bore a footnote as follows:

> "It has recently been noted that south and west of Santa Barbara Island and about 2000 feet distant, there is another small island known as 'Gull Island'. This is about 1200 feet in length by about 700 feet. The proclamation does not appear to include this island. Some study is being given to this fact at the present time by the Wildlife Section which believes the island has importance."

In this connection there is now attached copy of a memorandum dated March 24, by Biologist Lowell Sumner, in which he has given his views on the island in question. Your comments will be appreciated at your convenience.

(SGD) HERBERT MAIER
Herbert Maier,
Acting Regional Director.

DOCUMENT 11

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Region Four
San Francisco 5, California

May 13, 1947.

MEMORANDUM for the Director.

Reference is made to our memorandum of April 8 to Superintendent John R. White regarding Gull Island which lies immediately adjacent to Santa Barbara Island, one of the group composing the Channel Islands National Monument. Copy of that memorandum was sent to your office with copy of Mr. Sumner's memorandum of March 24 advocating inclusion of the island in question, in the monument.

There is now attached copy of Colonel White's reply of April 18 suggesting, in regard to protection, that "It might be better to wait until we are able to do something about the Channel Islands National Monument before we try to take in more territory".

We agree with Colonel White that any direct Service protection of this monument is negligible; however if the island were placed in monument status, that in itself would assure some protection, and we could hope for the same direct protection we have received in the past from the State Division of Fish and Game, and the U. S. Coast Guard.

The island itself is only 2000 feet from Santa Barbara Island, is about 1200 feet long by 700 feet wide and probably contains not more than 15 acres in area. We do not think there would be objections voiced

on anybody's part as to its inclusion. Mr. Sumner's memorandum speaks for itself as to the values and the need of the addition from a wildlife point of view.

Our recommendation would be that either the original proclamation be amended to include Gull Island by name and description, or that a new proclamation be issued to add it to the monument, unless your office feels there is some objection to any addition being presented at this time.

O. A. Tomlinson,
Regional Director.

DOCUMENT 12

[Handwritten original on printed form]

Office Memorandum
United States Government

DATE: 5/26/47

TO: Mr. Richey
SUBJECT: Extension: Channel Islands National Monument

I concur with the Region's recommendation to take Gull Island into the monument. It should be done without undue delay, before someone initiates a scheme for building a hotel or some other commercial enterprise on the island.

/s/ VHC

Concur
CPR
5/26

I concur and recommend we accept any land in Channel Islands. It will be an excellent Pacific Ocean area.
Vint 5/27

DOCUMENT 13

Office Memorandum
United States Government

DATE: June 4, 1947.

TO: Director Drury

FROM: Richey.

SUBJECT: Addition of Gull Island to Channel Islands National Monument.

In his memorandum of May 13, Regional Director Tomlinson recommended that Gull Island be made a part of Channel Islands National Monument. His recommendation, and the justification for this addition, contained in Mr. Sumner's memorandum of March 24 for the Regional Director, appear to me to be sound.

If you approve this recommendation, the next step would be to clear it with interested Congressional delegates from California.

Messrs. Vint, Russell, and Cahalane concur in this proposal. If you are agreeable to it, would you please indicate by signing on the line provided below?

/s/ C.A.R.
Acting Chief of Lands.

Approved:

/s/ Newton B. Drury
Director.

DOCUMENT 14

Office Memorandum
United States Government

DATE: June 6, 1947.

TO: Director Drury.

FROM: Richey.

SUBJECT: Additions to Channel Islands National Monument.

This refers to our discussion of June 5, and to my inter-office memorandum to you of that date which you approved, concerning the addition to Channel Islands National Monument of Gull Island and the off-shore rocks around it and other islands.

In our discussion, I mentioned to you Mr. Vint's view that we should have a base on the mainland and one on Santa Catalina Island to facilitate operations of the monument.

Quoted below is his memorandum of April 14 to me concerning the Boundary Status Report for Channel Islands:

"I think the Channel Island boundaries are inadequate. Some islands should be acquired in their entirety and jurisdiction over the water for some distance (say 1 mile) from shore. [I doubt if the latter is possible. C.A.R.]

"There should be a base on Catalina, possibly a large section near the isthmus, and a base on the mainland near Santa Barbara.

"The boundaries need study in a big way—a preliminary Master Plan should be made."

In our discussion you mentioned that for a number of years there had been available a lighthouse property in the vicinity of Santa Barbara which was excess property and which might serve as a base for the monument. You further mentioned that you believed the University of California may have acquired this property, but that you would check into the matter during your forthcoming trip to California.

The above information is given so that you will have it available for reference on your trip.

/s/ C.A.R.
Acting Chief of Lands.

cc: Mr. Vint.
Mr. Wirth (Washington).

DOCUMENT 15

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Chicago 54, Illinois

June 12, 1947.

MEMORANDUM for the Regional Director, Region Four.

Approval of the Boundary Status Report for Channel Islands National Monument is being withheld pending further study and a determination of the ownership status of Gull Island and other off-shore rocks and islets within one mile from Santa Barbara and Anacapa Islands. A copy of our memorandum of this date to the Bureau of Land Management is attached.

I think it would be well if, in the meantime, you can determine from the local Bureau of Lighthouse officials whether all of the tracts on the two islands excluded from the monument at the time of its establishment are still being used for lighthouse purposes. If not, we should try to have them included along with Gull Island.

(SGD) NEWTON B. DRURY
Director.

DOCUMENT 16

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Chicago 54, Illinois

June 12, 1947.

MEMORANDUM for the Director,
Bureau of Land Management.

Channel Islands National Monument, comprising all of Santa Barbara and Anacapa Islands off the coast of southwestern California, except a few small tracts reserved for lighthouse purposes, was established by Proclamation No. 2281 of April 26, 1938 (52 Stat. 1541), issued under authority contained in section 2 of the act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431). The proclamation effected the transfer of the lands involved from the Bureau of Lighthouses of the Department of Commerce to the jurisdiction of this Department for administration by the National Park Service for national monument purposes.

Gull Island, which lies approximately 2,000 feet southwest of Santa Barbara Island, was not included in the proclamation creating the national monument, yet its control is essential to the proper protection of Santa Barbara and the objects of geological and scientific interest, including marine life, for the preservation of which the monument was established. Therefore, we should appreciate learning the present ownership and jurisdictional status of Gull Island in order to determine the feasibility of its addition to the existing monument by proclamation of the President under the 1906 act.

In this connection, it is equally desirable that this Service have control of the various off-shore rocks and unnamed islets above the surface and within one-mile radii of both Santa Barbara and Anacapa Islands. Are these regarded as public domain?

(SGD) NEWTON B. DRURY
Director.

DOCUMENT 17

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

June 27, 1947.

MEMORANDUM

To: Director, National Park Service

From: Director, Bureau of Land Management.

Subject: Status of Gull Island and off-shore rocks and islets near Channel Islands National Monument, California.

I have received your memorandum of June 12, 1947, requesting the status of Gull Island and certain rocks and islets off the coast of California which are considered essential to the proper protection of the Channel Islands National Monument.

The records will be checked to ascertain the status and you will be informed as soon as possible.

For the Director:
/s/ Byron C. Denny
Chief, Land Classification Division.

DOCUMENT 18

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Region Four
San Francisco, California

July 7, 1947.

MEMORANDUM for the Superintendent,
Sequoia-Kings Canyon National Parks.

Reference is made to the Director's memorandum of June 12 to the Regional Director regarding Boundary Status Report for Channel Islands National Monument. Copy of the memorandum in question has already been sent you.

The Director, in considering the question of adding Gull Island and other off-shore rocks and islets, suggested that we "determine from the local Bureau of Lighthouse officials whether all of the tracts on the two islands excluded from the monument at the time of its establishment are still being used for lighthouse purposes." He says, "If not, we should try to have them included along with Gull Island."

The Lighthouse Service now functions within the U.S. Coast Guard, and apparently these islands come under the control of the Commanding Officer, 11th Coast Guard District, Times Building, Long Beach 2, Calif.

It is suggested that as you have opportunity you make an appointment with the Commanding Officer at Long Beach and endeavor to find out if there are any of the six reserved tracts which are not now being used for lighthouse purposes, and, if so, which they are.

We are inclined to believe that the Coast Guard would not release any of the tracts on which there are existing "beacons". For your guidance and help there is enclosed print of NM/CI-5301 showing in pink those portions under the jurisdiction of the National Park Service, and in yellow the six Lighthouse Reservations.

For your further information there have been rumors that the Navy intends to use the general area of the Channel Island for a "Directed Missiles Proving Ground". This, if true, may have some bearing on the attitude of the U.S. Coast Guard towards release of these tracts.

(SGD) O. A. TOMLINSON
O. A. Tomlinson,
Regional Director.

DOCUMENT 19

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

July 11, 1947

MEMORANDUM

To: Director, National Park Service

From: Director, Bureau of Land Mangement

Subject: Status of islands off coast of Southern California.

Reference is made to your memorandum of June 12, requesting information concerning the ownership and status of Gull Island located some 2,000 feet southwest of Santa Barbara Island, California.

Chart No. 5202, published by the U.S. Coast and Geodetic Survey, shows a small unnamed island about 2,000 feet southwest of Santa Barbara Island. The said unnamed island presumably is the one referred to in your memorandum as Gull Island. We have no information concerning it other than just indicated. If it existed, and was above ordinary high tide in 1850, when California was admitted into the Union, it is considered public land of the United States.

We note that you deem it advisable that your Service have control over the off-shore rocks and islets above ordinary high tide and within one mile of Santa Barbara and Anacapa Islands.

The reservation for national monument purposes of all rocks and islands within one mile of Santa Barbara and Anacapa Islands would include the rocks and

islets mentioned, and Gull Island, and no specific reference to the latter island would be necessary.

If you wish to have these islands added to the Channel Islands National Monument, the bureau will be glad to prepare an appropriate proclamation. In the event you desire at this time to have the islands withdrawn for national monument classification, a public land order to accomplish this purpose will be prepared.

/s/ Fred W. Johnson
Director.

DOCUMENT 20

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Chicago 54, Illinois

July 17, 1947.

Air Mail.

MEMORANDUM for the Regional Director,
Region Four.

We are in receipt of a memorandum of July 11 from the Bureau of Land Management stating that, since Gull Island was apparently above ordinary high tide in 1850, when California was admitted into the Union, it is considered public land of the United States.

The Bureau states further:

> "The reservation for national monument purposes of all rocks and islands within one mile of Santa Barbara and Anacapa Islands would include the rocks and islets mentioned, and Gull Island, and no specific reference to the latter island would be necessary.
>
> "If you wish to have these islands added to the Channel Islands National Monument, the bureau will be glad to prepare an appropriate proclamation."

Please advise us whether Superintendent White has been able to ascertain from U.S. Coast Guard officials the present lighthouse requirements on the islands comprising Channel Island National Monument and their attitude toward releasing any of the lands not now in use. We should appreciate learning also whether Director Drury has been able to check into the matter

of the surplus lighthouse property on the mainland near Santa Barbara, which has been proposed for a headquarters area. The Director discussed this possibility immediately prior to departing for the West, and said he would try to look into the situation.

We will be in a position to submit a form of proclamation to add Gull Island and other off-shore rocks and islets to the monument as soon as this information is at hand. The same proclamation should, of course, include any surplus lighthouse property on the Islands and, if possible, a satisfactory headquarters area on the mainland.

(SGD) J. D. COFFMAN
Acting Director.

DOCUMENT 21

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Washington 25, D. C.

November 10, 1947.

MEMORANDUM for the Regional Director, Region Four.

After careful consideration of your memorandum of October 28, concerning the likelihood that the Navy's directed missile experiments from Point Hueneme will seriously affect Channel Islands National Monument, I am inclined to believe that there might be some advantage to be gained if we were to proceed at once with the addition to the monument of Gull Island and other off-shore rocks within one mile from Santa Barbara and Anacapa Islands. The Bureau of Land Management, as you will recall, indicated in a memorandum of July 11 that it would be satisfactory to proceed with this addition.

If the Navy occupies the lighthouse in connection with these experiments, certainly the biological features of the monument are going to be seriously endangered. It would seem, therefore, that we might be in a better position to protect the area, and particularly the sea lions, if we had unqualified jurisdiction of the coastal portions of the monument.

Would you object if we proceeded to submit a form of proclamation as contemplated originally?

(SGD) NEWTON B. DRURY
Director.

DOCUMENT 22

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Region Four
San Francisco, California
601 Sheldon Bldg.

November 18, 1947.

MEMORANDUM for the Director.

Reference is made to your memorandum of November 10 in connection with the proposal that Gull Island be added to the Channel Islands National Monument.

We see no objection to immediate preparation of a proclamation which would enlarge the Monument so as to include Gull Island and other off-shore rocks within one mile of Santa Barbara and Anacapa Islands. It is our feeling that it is only by such status that there will be recognized authority to protect the wildlife and other values.

Attached is copy of Biologist Sumner's memorandum of November 18 suggesting that when this addition is made, the Department enter into a Co-operative Protective Agreement with the Navy Department by which the latter will instruct its personnel to "protect" all wildlife. Not only would this give us equivalent police protection, but it would serve to create a personal interest and greater understanding of such types of conservation on the part of the Navy personnel and one which ultimately would reach an even wider field than this particular Monument. We believe Mr. Sumner's

suggestion is very good and that such an arrangement would be of inestimable value to this Service in view of our complete lack of protective personnel in the area.

/s/ O. A. Tomlinson
O. A. Tomlinson,
Regional Director.

DOCUMENT 23

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Region Four
San Francisco, California
601 Sheldon Bldg.

November 18, 1947

MEMORANDUM for the Regional Director, Region Four.

The Director's memorandum of November 10 points out that wildlife may be adversely affected if lighthouse buildings and other facilities on the Channel Islands National Monument are occupied by the Navy in connection with its guided missile research program. Because of this possible danger, the memorandum suggests that the Service should proceed, as originally planned, with submission of a proclamation adding Gull Island and other off-shore rocks to the Monument.

Inclusion of these off-shore rocks is a wise protective measure. However, it appears that we might easily go further and secure important additional protection for the entire Monument. Recently, at the urging of prominent conservation organizations, the Navy wholeheartedly agreed to administer the bird rookeries of the South Pacific as wildlife sanctuaries, and to restrain its personnel from molesting them. In view of this fact, it is believed that the Service could easily secure a cooperative agreement from the Navy for protection of the Channel Islands National Monument.

A formal request for cooperation in protecting the wildlife and other natural features of the Monument

probably should be made to the Secretary of the Navy from the Secretary of the Interior. Following such an agreement the Superintendent and the Region Director, or his representatives, could meet informally with Navy officials in immediate command of operations in the Channel Islands area and secure their personal cooperation. Occupation of the Monument by Navy personnel under a strict cooperative agreement for protection would be a real improvement over conditions existing before the war, when irresponsible hunters and fishermen could land and shoot up the wildlife rookeries with little or no interference.

In addition to the above protection measures it is strongly urged that arrangements be worked out as soon as possible for an inspection of the Monument next April by members of this office who have never seen the area. It is quite possible that we may not have another opportunity to make an unhampered inspection for several years. In view of the policy decisions that are continually being forced upon the Service in connection with this Monument, personal familiarity with the area on the part of staff members is imperative.

Lowell Sumner,
Biologist.

DOCUMENT 24

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Washington 25, D.C.

December 16, 1947.

MEMORANDUM for the Regional Director, Region Four.

As the situation with respect to the boundary of Channel Island National Monument has changed considerably since the Boundary Status Report for that area was prepared last year, we are returning the report for revision. In the meantime, we are proceeding with the preparation of a proclamation to add to the monument all islets, rocks, and waters within one nautical mile of Santa Barbara and Anacapa Islands excepting, of course, the lighthouse reservations.

I am not inclined to agree entirely with your recommendation of August 5 "that no further consideration be given to the procurement of a headquarters on the mainland." I believe that if the area is worthy of retaining its status within the National Park System, it is deserving of a comprehensive study and a Master Plan so that our real needs can be known.

I agree with Biologist Sumner's suggestion that the Department enter into a cooperative protective agreement with the Navy Department whereby the latter will instruct its personnel to "protect" all wildlife in the area. This action should not be initiated, however, until after the proclamation is signed.

(SGD) NEWTON B. DRURY
Director.

DOCUMENT 25

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Region Four
San Francisco 5, California
601 Sheldon Bldg.

December 31, 1947.

MEMORANDUM for the Superintendent, Sequoia.

Reference is made to the matter of the Boundary Status Report for the *Channel Islands National Monument* submitted to the Director on March 17, 1947, by this office.

There has been considerable correspondence back and forth on this subject, much of which had to do with the suggestion that "Gull Island and other offshore rocks and islets within one mile" be added to the Monument.

It appears that the Director is having the necessary proclamation prepared covering the above mentioned additions. In the meantime it is requested that you prepare the usual four copies of a revised Boundary Status Report and submit three to this office. Your report should include these proposed changes and indicate a "2" classification.

It will be seen from the Director's memorandum of December 16, copy attached, that he suggests we carry out Biologist Sumner's recommendation that the Department enter into a cooperative protective agreement with the Navy Department whereby the latter will instruct its personnel to "protect" all wildlife in the area. However, Mr. Drury says this should not

be initiated until the proclamation is signed, at which time, if you are agreeable, we will have Mr. Sumner discuss the subject with local officers of the Coast Guard. The matter may have to go subsequently to the San Diego District.

O. A. Tomlinson,
Regional Director.

DOCUMENT 26

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Region Four
San Francisco, California
601 Sheldon Bldg.

January 13, 1948.

MEMORANDUM for the Superintendent, Sequoia.

Attached is copy of proposed letter to the President from the Secretary of the Interior enclosing a suggested proclamation which would add Gull Island, and other off-shore islets within one nautical mile, to the Channel Islands National Monument.

It should be noted that the enclosed communication is for "information only" since it has not yet been signed by the Secretary. Incidentally, the matter should still be considered in the confidential stage.

Mr. Sumner reminds me that you had promised sometime to bring up to the regional office the 400-foot reel of your movies of the Channel Islands. These pictures have never been shown in the regional office, so may I suggest that the next time you visit San Francisco you be kind enough to bring them with you. Many members of the staff are anxious to see them.

(SGD) O. A. TOMLINSON
O. A. Tomlinson,
Regional Director.

The Secretary of the Interior
Washington 25, D.C.

National Park Service Office Copy

My dear Mr. President:

Through the Bureau of the Budget.

Channel Islands National Monument, comprising all of Santa Barbara and Anacapa Islands off the coast of southwestern California, except a few small tracts reserved for lighthouse purposes, was established by Proclamation No. 2281 of April 26, 1938 (52 Stat. 1541), issued under authority contained in section 2 of the act of June 8, 1906 (34 Stat. 225, 16 U. S. C. 431). The proclamation did not, however, include several small islets and rocks, the control of which is essential to the proper protection of the objects of geological and scientific interest, including marine life, for the preservation of which the monument was established.

I recommend that you sign the attached form of proclamation, which would place under administrative control of the National Park Service the islets, rocks, and waters within a distance of one nautical mile from Santa Barbara and Anacapa Islands. This will afford proper protection to the seals, sea lions, and sea elephants. Some of these species are rare and need absolute protection if they are not to become extinct in American waters.

The above extension of jurisdiction will not involve the expenditure of any additional funds for the administration and protection of the area.

Sincerely yours,

Secretary of the Interior.

The President,
The White House.

Enclosure 781.

DOCUMENT 27

BOUNDARY STATUS REPORT

Name of Area CHANNEL ISLANDS NATIONAL MONUMENT

Date Prepared 1/16/48

Classification 2

Adjustments Recommended:

Channel Islands National Monument, comprising all of Santa Barbara and Anacapa Islands off the coast of southwestern California, except a few small tracts reserved for lighthouse purposes, was established by Proclamation No. 2281, dated April 26, 1938 (52 Stat. 1541) Reference Blueprint NM-CI-7000.

It is now proposed to revise the boundaries of the Monument in order to place Gull Island and all islets, rocks, and waters within a distance of one nautical mile from Santa Barbara and Anacapa Islands under the administrative control of the National Park Service. This is essential to the proper protection of the objects of geological and scientific interest, including marine life, for the preservation of which the Monument was established.

Regional Office notation:—Extension of islets, and rocks mentioned above would be exclusive of lighthouse reservations.

Recommended by: /s/ E.T. Scoyen

Title: Superintendent Date 1/19/48

Concurred: (SGD) HERBERT MAIER

Act'g Regional Director, Jan. 21, 1948

Approved: 7-1 1948

(SGD) Hillory A. Tolson

Acting Director.

DOCUMENT 28

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Region Four
San Francisco, California
601 Sheldon Bldg.

January 21, 1948.

MEMORANDUM for the Director.

In accordance with your memorandum of December 16 we are now submitting in triplicate revised Boundary Status Report for the Channel Islands National Monument.

The revised report includes under "Adjustments Recommended" a proposal to add to the Monument, "Gull Island and all islets, rocks, and waters within a distance of one nautical mile of Santa Barbara and Anacapa Islands." Your office has already agreed to this addition and suggested the wording.

It will be seen that we have added a regional office notation to the effect that lighthouse reservations should be excluded from the proposed extension. This was suggested in your above-mentioned memorandum, and is in line with the wording of the original proclamation. In the circumstances it does not appear that we could do otherwise than follow this principle. Actually this condition might at times create difficulties for the Park Service since the lighthouse reservations would not come under Park Service regulations prohibiting hunting. One

whole island of the Anacapa group is a lighthouse reservation. We presume that technically persons could hunt on a lighthouse reservation unless the Coast Guard, which is now the agent therefor, issued its own regulations prohibiting it.

/s/ Herbert Maier,
Herbert Maier,
Acting Regional Director.

DOCUMENT 29

The Secretary of the Interior
Washington 25, D. C.

July 2, 1948

My dear Mr. President:

Through the Bureau of the Budget.

Channel Islands National Monument, comprising all of Anacapa and Santa Barbara Islands off the coast of southwestern California, except a few small tracts reserved for lighthouse purposes, was established by Proclamation No. 2281 of April 26, 1938 (52 Stat. 1541), issued under authority contained in section 2 of the act of June 8, 1906 (34 Stat. 225, 16 U. S. C. 431). The proclamation did not, however, include several small islets and rocks, the control of which is essential to the proper protection of the objects of geological and scientific interest, including marine life, for the preservation of which the monument was established.

I recommend that you sign the attached form of proclamation, which would place under administrative control of the National Park Service the area within a distance of one nautical mile from the shoreline of Anacapa and Santa Barbara Islands. This will afford proper protection to the seals, sea lions, and sea elephants. Some of these species are rare and need absolute protection if they are not to become extinct in American waters.

Similar protection was given to the extraordinary marine life in the immediate vicinity of the Dry Tortugas group of islands off Key West, Florida, when that area was established as Fort Jefferson National Monument by Proclamation No. 2112 of January 4, 1935 (49 Stat. 3430).

The above extension of jurisdiction will not involve the expenditure of any additional funds for the protection and administration of the area.

Sincerely yours,
(SGD) J. A. KRUG
Secretary of the Interior.

The President,
The White House.

Enclosure 781.

ENLARGING CHANNEL ISLANDS NATIONAL MONUMENT, CALIFORNIA

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS Channel Islands National Monument, comprising all of Anacapa and Santa Barbara Islands off the coast of southwestern California, except a few small parcels of land reserved for lighthouse purposes, was established by Proclamation No. 2281 of April 26, 1938 (52 Stat. 1541), issued under authority contained in Section 2 of the act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431); and

WHEREAS Proclamation No. 2281 did not include several small islets and rocks in the vicinity of Anacapa and Santa Barbara Islands, the control of which is essential to the proper protection of the objects of geological and scientific interest, including marine life, for the preservation of which the Monument was established; and

WHEREAS it appears that it would be in the public interest to extend the boundaries of the Monument to include the areas adjacent to Anacapa and Santa Barbara Islands:

NOW, THEREFORE, I, Harry S. Truman, President of the United States of America, under and by virtue of the authority vested in me by section 2 of the act of June 8, 1906, *supra*, do proclaim that, subject to valid existing rights, the area within one (1) nautical mile of the shoreline of Anacapa and Santa Barbara Islands and as indicated on the diagram hereto attached and forming a part hereof, is reserved from all forms of appropriation under the public-land laws and added to and made a part of Channel Islands National Monument.

The reservation made by this Proclamation shall not affect the lands included in existing reservations for lighthouse purposes, and the right of ingress and egress thereto, as particularly described and excepted in Proclamation No. 2281 establishing the Monument.

Warning is hereby expressly given to any unauthorized persons not to appropriate, injure, destroy, or remove any feature of this Monument and not to locate or settle upon any of the lands thereof.

The Director of the National Park Service, under the direction of the Secretary of the Interior, shall have the supervision, management, and control of this Monument as provided in the Act of Congress entitled "An Act to establish a National Park Service and for other purposes," approved August 25, 1916 (39 Stat. 535, U.S.C., title 16, secs. 1 and 2), and acts supplementary thereto or amendatory thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this day of in the year of our Lord nineteen hundred and forty-eight, and of the Independence of the United States of America the one hundred and seventy-third.

By the President:

Secretary of State.

DOCUMENT 30

180 New Montgomery St.

July 8, 1948.

MEMORANDUM for the Superintendent,
Sequoia-Kings Canyon.

This is to notify you that your revised Boundary Status Report for the Channel Islands National Monument dated January 19, 1948, was approved by the Acting Director under date of July 1, 1948. The latter date should be recorded on your file copy.

Herbert Maier,
Associate Regional Director.

DOCUMENT 31

EXECUTIVE OFFICE OF THE PRESIDENT
Bureau of the Budget
Washington 25, D.C.

Dec. 16, 1948.

My dear Mr. Attorney General:

Herewith is a proposed Executive Proclamation, presented by the Secretary of the Interior, entitled "Enlarging Channel Islands National Monument, California".

The proposed proclamation sets out that the Channel Islands National Monument, comprising all of Anacapa and Santa Barbara Islands off the coast of southwestern California, except a few small parcels of land reserved for lighthouse purposes, was established by Proclamation No. 2281 of April 26, 1938; that the areas reserved by the same proclamation do not include several small islets and rocks in the vicinity of the said islands, the control of which is essential to the proper protection of the objects of geological and scientific interest, including marine life, for the preservation of which the Monument was established; and that it would be in the public interest to extend the boundaries of the Monument to include the areas adjacent to the two islands.

The proposed proclamation provides that, subject to valid existing rights, the area within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands as indicated on the diagram attached thereto

and forming a part thereof is reserved from all forms of appropriation under the public-land laws and added to and made a part of the Channel Islands National Monument.

The Secretary of the Interior advises that the extension of the boundaries of the Monument, as proposed, will afford proper protection to the seals, sea lions, and sea elephants, some of which species are rare and need absolute protection if they are not to become extinct in American waters, pointing out, in this connection, that similar protection was given to the extraordinary marine life in the immediate vicinity of the Dry Tortugas group of islands when that area was established as the Fort Jefferson National Monument by Proclamation No. 2112 of January 4, 1935.

The Acting Secretary of the Navy, by letter of November 9, 1948, enclosed herewith, advises that the Navy Department interposes no objection to the extension of the boundaries of the Monument, as proposed, provided it shall not in any manner curtail the Navy's guided missile test program and the use of land in connection therewith at Point Mugu, and provided further that the Department continues to have the right of ingress and egress to Anacapa Island under its existing arrangements with the Coast Guard.

The Secretary of the Interior, in his attached letter of December 2, gives assurance that issuance of the proclamation will not affect the indicated Navy interest in the area.

Subject to such revision of the form thereof as you may consider appropriate, the proposed proclamation has the approval of the Director of the Bureau of the Budget.

Very truly yours,
/s/ Elmer B. Staats
Assistant Director
Legislative Reference

The Honorable
The Attorney General

Enclosures

DOCUMENT 32

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Region Four
San Francisco 5, California
180 New Montgomery Street

January 14, 1949.

Mr. J. W. Sefton, Jr.,
President, J. W. Sefton Foundation,
Care San Diego Trust and Savings Bank,
San Diego, California.

Dear Mr. Sefton:

Your letter of January 5 to the Director, requesting a permit to make scientific collections from the tide pools of the Channel Islands National Monument, has been referred to this office.

Anacapa Island, as well as Santa Barbara Island, is included in the Channel Islands National Monument. In the case of both areas the monument boundary at the present time is described as the "high water line." Therefore it appears that the collecting that you propose actually will not be within the monument. For this reason no permit will be necessary for your present project.

Time did not permit the issuance by the Director's Office of a collecting permit in accordance with your request. However, should you desire to carry on additional collecting in the future, it may be advisable to have one since there is some possibility that the monument boundary may be extended to include adjacent water in order to eliminate the destructive activities

of persons who have been shooting from boats. If you do wish a permit, please let us know several weeks in advance of collecting.

In order to increase our knowledge of this important scientific national monument and to facilitate our protection program, it will be appreciated if you will share with us any pertinent observations resulting from your visit. We wish you every success.

Sincerely yours,
(SGD) HERBERT MAIER
Herbert Maier,
Acting Regional Director.

DOCUMENT 33

DEPARTMENT OF JUSTICE
Washington
January 28, 1949
MEMORANDUM FOR
THE ATTORNEY GENERAL

Re: Proposed proclamation entitled "Enlarging the Channel Islands National Monument, California"

The attached proposed proclamation is presented by the Secretary of the Interior. It has been forwarded for your consideration by the Bureau of the Budget with the approval of the Director.

The proposed proclamation would enlarge the Channel Islands National Monument, California, to include the adjacent areas within one nautical mile of Anacapa and Santa Barbara Islands. It appears from the accompanying letter of the Secretary of the Interior to the President that the public interest would be promoted by adding these areas to the national monument in order to properly protect the objects of geological and scientific interest for the preservation of which the monument was established.

The Navy Department interposes no objections to the proposed proclamation.

Authority for the proposed proclamation is contained in section 2 of the so-called Antiquities Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431), which reads as follows:

> "The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric

> structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected. When such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States."

The proposed proclamation originally stated, in addition to the justifiable grounds for enlarging the monument under the above Act, a purpose to protect marine life. It has been the opinion of this office that it is doubtful whether the Antiquities Act permits the establishment or enlargement of a national monument to protect plant and animal life (see Department of Justice Files 90-1-04-317 and 90-1-04-367). Hence the language relating to this purpose has been eliminated from the proclamation.

In addition, revision of the proposed proclamation has been made in this office with respect to form and language but no change has been made in substance. The proposed proclamation, as amended, has been informally approved by the Department of the Interior.

I recommend that you approve the proposed proclamation as to form and legality, and accordingly I have prepared and submit for your signature and consideration a letter to the President in which the proclamation is so approved.

/s/ George T. Washington
George T. Washington
Assistant Solicitor General

DOCUMENT 34

Feb. 7, 1949

Through Division of the Federal Register

The President,
The White House.

My dear Mr. President:

I am herewith transmitting a proposed proclamation entitled "Enlarging the Channel Islands National Monument, California".

The proposed proclamation, presented by the Secretary of the Interior and forwarded for my consideration by the Bureau of the Budget with the approval of the Director, has been revised in this Department with the informal approval of the Department of the Interior.

As revised, the proposed proclamation has my approval as to form and legality.

Respectfully yours,
(SGD) Tom C. Clark
Attorney General

DOCUMENT 35

February 9, 1949
[No. 2825]

ENLARGING THE CHANNEL ISLANDS NATIONAL MONUMENT, CALIFORNIA

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS it appears that certain islets and rocks situated near Anacapa and Santa Barbara Islands, which for the most part form the Channel Islands National Monument, established by Proclamation No. 2281 of April 26, 1938 (52 Stat. 1541), are required for the proper care, management, and protection of the objects of geological and scientific interest located on lands within the said monument; and

WHEREAS it appears that it would be in the public interest to extend the boundaries of the said monument to include the hereinafter-described areas adjacent to the said islands:

Channel Islands National Monument, addition of areas.

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, under and by virtue of the authority vested in me by section 2 of the act of June 8, 1906, 34 Stat. 225 (16 U. S. C. 431), do proclaim that, subject to valid existing rights, the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands, as indicated on the diagram hereto attached and forming a part hereof, are withdrawn from all forms of appropriation under the public-land laws and added to and reserved as a part of the Channel Islands National Monument.

The reservation made by this proclamation shall not affect the lands included in existing reservations for lighthouse purposes, or the rights of ingress and egress appertaining thereto, as particularly described in the said Proclamation No. 2281.

52 Stat. 1541.

Warning.

Warning is hereby expressly given to any unauthorized persons not to appropriate, injure, destroy, deface, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

Supervision, management, etc.

The Director of the National Park Service, under the direction of the Secretary of the Interior, shall have the supervision, management, and control of this monument as provided in the act of Congress entitled "An act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U. S. C. 1 and 2), and acts supplementary thereto or amendatory thereof.

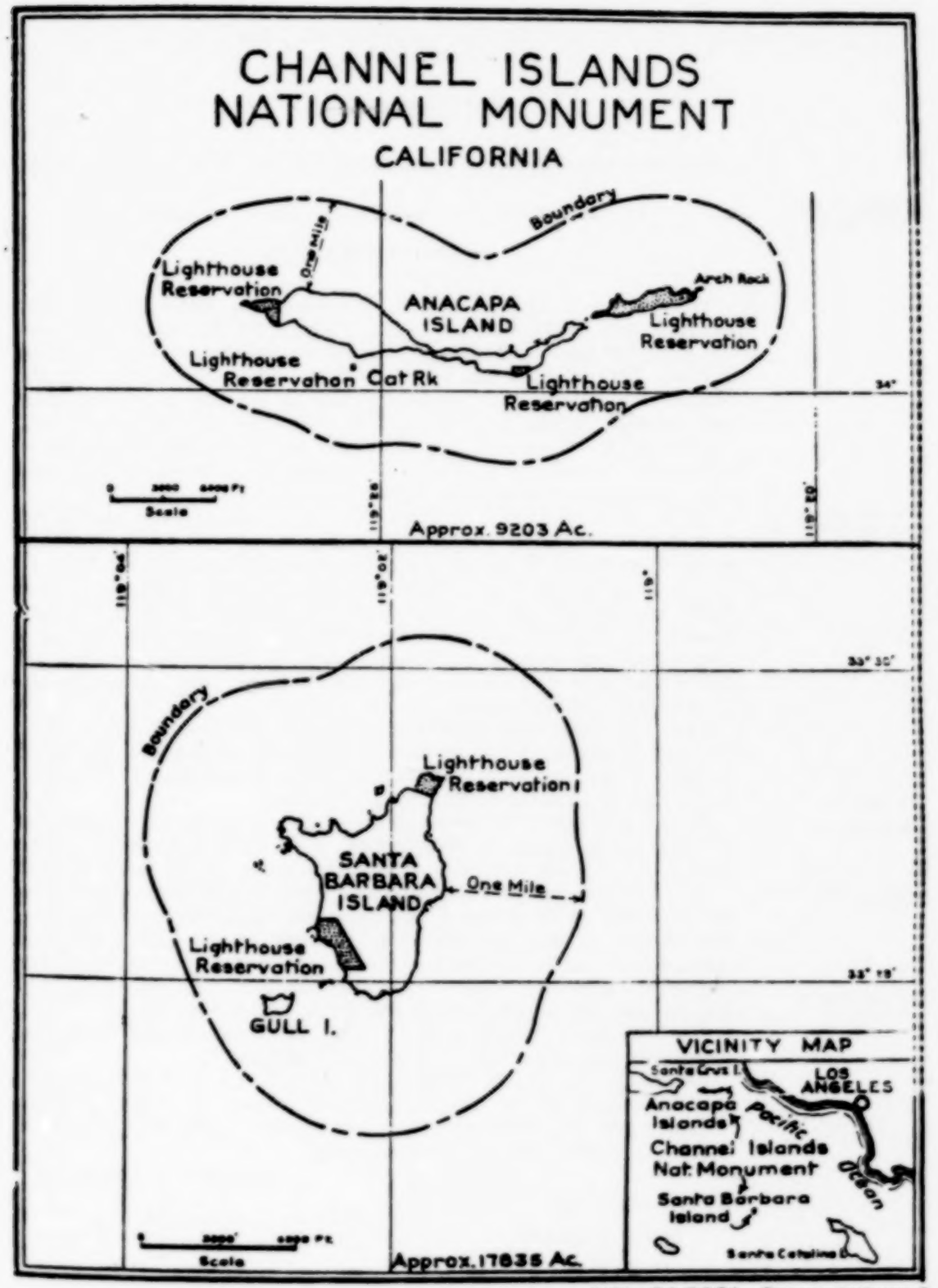
IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 9th day of February in the year of our Lord nineteen hundred and forty-nine, and [SEAL] of the Independence of the United States of America the one hundred and seventy-third.

HARRY S TRUMAN

By the President

DEAN ACHESON
Secretary of State.



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DOCUMENT 36

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Washington

May 31, 1949

Memorandum

To: Mr. Drury.

FROM: Mr. Price.

Subject: Jurisdiction of submerged lands at Channel Islands National Monument.

In your note of May 16 you inquire whether the bill recently enacted by the California Legislature to redraw the seaward boundary of the State will affect our jurisdiction over Channel Islands National Monument, which is located about 15 miles from the California mainland.

Although I have not seen the State act, I do not believe that it can affect Federal control and ownership of lands within Channel Islands National Monument, which was recently enlarged by Presidential proclamation to include all areas within one nautical mile of the shoreline of the two principal islands. 14 Fed. Reg. 635. It appears from the newspaper clipping accompanying your note that the California act merely redefines the previously indefinite seaward boundary of the State "to run outside the Channel Islands and other reefs, rocks, adjacent to the mainland."

As you know, the Supreme Court of the United States recently held in the California tidelands case that "California is not the owner of the three-mile marginal belt along its coast; and the Federal Govern-

ment rather than the State has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil." *United States v. California,* 332 U. S. 19, 29-39. Since the Channel Islands are located 15 miles from the mainland, the three-mile marginal belt in this case would necessarily encircle the islands and include the submerged areas recently added to Channel Islands National Monument. If the Federal title, upon which our jurisdiction is based, is a valid one, the State cannot affect this title or jurisdiction by the passage of State legislation.

/s/ Jackson E. Price,
Jackson E. Price,
Chief Counsel.

DOCUMENT 37

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Region Four
San Francisco, California
180 New Montgomery St.

Mr. A. P. Ireland,
Chief, Div. of State Lands,
Room 554 Business and Professions Bldg.,
Sacramento 14, California.

June 13, 1949

Dear Mr. Ireland:

It is our understanding that during the month of April or May 1949 the California State Legislature passed a bill which would indicate by its general language that the State of California lays claim to the waters surrounding the Channel Islands.

The only information we have on the bill is an editorial briefly commenting on it at that time. We do not know the contents of the bill or whether it was intended to embrace the entire group of the Channel Islands. As our Channel Islands National Monument embraces the Anacapa and Santa Barbara Islands *as well as the waters for one nautical mile surrounding those islands,* naturally we are quite interested in the bill.

If it is possible, and not too inconvenient, for you to obtain two copies of the bill we should very much appreciate it. We realize that normally this request

should be made through the Legislative Counsel, but our information is so meager that we thought we would first make inquiries of you.

Sincerely yours,
(SGD) HERBERT MAIER
Herbert Maier,
Associate Regional Director.

DOCUMENT 38

State of California
Department of Natural Resources
DIVISION OF FISH AND GAME
Ferry Building
San Francisco 11, California

July 15, 1949.

TO WHOM IT MAY CONCERN:

The National Park Service has just called to our attention the fact that Santa Barbara and Anacapa Islands, and the waters surrounding said islands to a distance of one nautical mile, comprise the Channel Islands National Monument.

The National Park Service also advises us that they will not permit any use of explosives for any purpose within the boundaries of this National Monument.

In the exercise of any permit previously issued by the California Fish and Game Commission to use explosives for seismic operations, or in the exercise of any permit which may be granted in the future, you will please be governed by this notice.

FISH AND GAME COMMISSION
By
E. L. MACAULAY
Executive Officer

DOCUMENT 39

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Sequoia and Kings Canyon National Parks
Three Rivers, California

February 13, 1950

Memorandum

To: Regional Director, Region Four

From: Superintendent, Channel Islands National Monument

Subject: February 9, 1950 inspection of Anacapa Island

The following is my report on an inspection of Anacapa Island made on February 9, 1950. This concerns general matters and does not cover Mr. Weighill's application, on which a separate memorandum will be prepared.

The trip to the island from Port Hueneme was made on Mr. Weighill's boat the S. S. Vellron. Service personnel who made the trip were Messrs. Maier, Sumner, Kerr and Scoyen.

Conditions on the island appear to have changed but little since I was ashore there the last time in May 1940. Mr. Raymond (Frenchy) LeDreau still maintains residence on the island. Neither Frenchy nor his shack show any change, except that additional junk has accumulated around the place. A thorough cleanup is needed, and this will be done next spring. Meanwhile, I think all are agreed to leave the old Frenchman undisturbed.

Additional problems will arise from the fact that our boundary is now one mile out to sea. There seemed to be some concern over the fact that a kelp reduction plant is in operation at Hueneme. There are fine beds of this sea plant on the south side of the island. I was informed that we could obtain strong support among the sport fishermen along the coast if pressure should develop to harvest kelp in monument waters. As a matter of fact, I think we can count on this support for a general program directed at maintaining the monument and adjacent waters in accordance with accepted Service policies.

The area around Anacapa is considered a prime fishing ground, especially for sport fishing. However, a fairly large ship is needed to cross Santa Barbara Channel under all conditions, and this keeps down the number of trips made by individual fishermen. One lobster boat was noted pulling traps.

/s/ E. T. Scoyen
E. T. Scoyen
Superintendent

DOCUMENT 40

State of California
Department of Natural Resources
Division of Fish and Game
Ferry Building
San Francisco 11, California

June 14, 1950.

National Park Service
Washington, D. C.

Gentlemen:

We have seen reports in the Los Angeles press to the effect that the National Park Service is planning to license fishing resort facilities at the Anacapa Island National Monument. The reports indicate that the National Park Service will prohibit commercial fishing and kelp harvesting in the waters surrounding the Island.

Would you please advise us what your intentions may be. The commercial fishermen and kelp companies operating in this area have expressed concern to us; but before making any representations, we should like to know what is planned.

Very truly yours,
/s/ E. L. Macaulay
E. L. MACAULAY
Executive Officer

DOCUMENT 41

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Region Four
San Francisco, California

July 20, 1950

Memorandum

To: Superintendent, Sequoia and Kings Canyon

From: Acting Regional Director

Subject: Fishing and kelp harvesting in waters surrounding Anacapa Island

Attached is copy of a letter of June 14 from E. L. Macaulay, Executive Officer of the California Division of Fish and Game, to our Washington Office, asking whether this Service intends to prohibit commercial fishermen and kelp harvesting companies from operating within the boundaries of the Channel Islands National Monument, which extend one nautical mile from the shore line of the islands. Attached also is copy of Mr. Taylor's reply of July 6 referring the matter to this office, together with a draft of our proposed letter to Mr. Macaulay, which we are holding until we have obtained your reactions.

As brought out in our proposed letter, there is general agreement here that the kelp beds are essential for wildlife protection and should not be disturbed. With respect to commercial fishing, discussions here have brought out that the Service is not in a very good position to prohibit this activity. Commercial fishing is permitted in the vicinity of Glacier Bay National Monument and elsewhere and, since the fish of the

ocean waters around the monument are not in any way confined to the monument or particularly dependent upon it, we cannot very well claim that we are giving special protection to them. As a matter of fact, we doubt that extensive fishing, either commercial or sports, will take place within one nautical mile of the monument shore line. We believe that the main fishing banks are located far out in the open waters.

We shall appreciate hearing from you as soon as possible on this matter.

C. E. Persons
Acting Regional Director

DOCUMENT 42

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Sequoia and Kings Canyon National Parks
Three Rivers, California

August 2, 1950

Memorandum

To: Regional Director, Region Four

From: Superintendent, Sequoia and Kings Canyon

Subject: Fishing and kelp harvesting in waters surrounding Anacapa Island

The draft of the proposed letter to Mr. Macauley, forwarded with your letter of July 20, is satisfactory. I have no changes to suggest. However, you may desire to point out that restricting kelp operations in an area only one mile wide around such small islands as Anacapa and Santa Barbara certainly will have only the slightest effect on the kelp industry of the State of California.

During our visit to Anacapa and Santa Barbara Islands we also discussed the matter of preserving the native marine life on the rock tidal shelves along the south side of Anacapa Island. It is my intention, before Mr. Weighill gets his operations in full swing, to recommend a regulation prohibiting fishing of all kinds in this area. In other words, the abalone, star fish and other forms of marine life should be left undisturbed for public observation.

/s/ E. T. Scoyen
E. T. Scoyen
Superintendent

DOCUMENT 43

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Washington 25, D. C.

Jan. 22, 1951

Hon. Carl Hinshaw
House of Representatives
Washington 25, D. C.

My dear Mr. Hinshaw:

In accordance with your request made to Chief Historian Ronald P. Lee of this Service, there are enclosed the following data relating to the Channel Islands National Monument, California:

1. A map, dated December 12, 1947, showing the monument area.
2. Copy of the Executive Proclamation of April 26, 1938, establishing the area.
3. Copy of the Executive Proclamation of February 9, 1949, enlarging the boundary.
4. Copy of press release of May 3, 1938, announcing establishment of the area.

The outstanding characteristics of the Channel Islands are a large rookery of sea lions; unique plants and mammals; and fossils ranging from marine invertebrates to Pleistocene elephants. To the casual visitor, the Channel Islands present a rather bleak aspect and they will probably never be known for their outstanding scenic beauty. Anacapa Island, however, presents a rather unusual land form of high vertical cliffs. The Channel Islands National Monument is probably more important as a marine reservation than as a scenic area. The

aquatic life in both the animal and vegetable kingdoms offer outstanding exhibits in the offshore waters. One of the most important steps taken in behalf of the Channel Islands was the declaration of President Truman in February 1949 extending the monument to include the waters for a mile offshore. A protection of this marine life is of vital importance. Professor Setchel, one time head of the botany department at the University of California at Berkeley has advised that the giant growths of kelp which drift offshore on these Islands, and off the sections of the mainland, correspond in under-sea life to the giant Sequoias in life above sea level. The variety of fish, marine animals and the waters offshore of Southern California include those of the northern waters. In other words, there is an overlap which gives a greater variety perhaps of marine animal life than in any other section of our shore.

There has been no progress in a development plan of the Channel Islands National Monument. There will be no need of any overnight accommodations to speak of as Catalina Island can give the visitors such an experience. Could more of the Island group to the north be added to the Monument, then one day the overnight facilities might be of importance. There should, however, be a base, a mainland base, near Santa Barbara and possibly another near Los Angeles. It has also been suggested that a base be established on Catalina, from which exploratory trips to the Channel Islands National Monument could be made. The developments at Anacapa and Santa Barbara Islands at the minimum need to provide landing facilities for small boats and a limited trail system to lead the visitor to overlooks where they might look

down on the shoreline at such points as the one on Anacapa Island where regularly a large colony of sea lions can be seen.

The Channel Islands National Monument is administered under the general supervision of Superintendent E. T. Scoyen of Sequoia and Kings Canyon National Parks, Three Rivers, California. There is as yet no regular appropriation for the area. The National Park Service item in the President's budget for the 1952 fiscal year includes an amount of $4,500 to provide a ranger and other minimum protection for the area.

It is hoped that the above information will be of interest to you and if you wish further data, representatives of this Service who are familiar with the Channel Islands area will be glad to call at your office to discuss it further with you.

Sincerely yours,

(SGD) HILLORY A. TOLSON
Hillory A. Tolson
Acting Director

DOCUMENT 44

UNITED STATES
DEPARTMENT OF THE INTERIOR
National Park Service
Sequoia And Kings Canyon
National Parks
Three Rivers, California

April 8, 1953

Memorandum

To: Regional Director, Region Four

From: Superintendent, Sequoia and Kings Canyon

Subject: Channel Islands National Monument operations

In connection with our operations in the Channel Islands, I wonder just what effect this Tidelands question will have on the monument boundaries, which in that area are set one mile out at sea. I do not know if there is any reason for giving too much attention to the matter.

Among other recommendations Mr. Rutter made in his report on his Channel Island investigations, is that we make the boundaries of the monument the low tide mark. This situation will be covered more in detail when we send in the report.

/s/ E. T. Scoyen
E. T. Scoyen
Superintendent

DOCUMENT 45

April 27, 1953

Memorandum

To: The Director

From: Acting Regional Director, Region Four

Subject: Channel Islands National Monument operations

There is attached a copy of Superintendent Scoyen's memorandum of April 8 in which he wonders just what effect the Tidelands question will have on the Monument boundaries of the Channel Islands.

As you know, Proclamation No. 2825 of February 9, 1949, extended the boundaries of the Channel Islands National Monument one nautical mile from Anacapa and Santa Barbara Islands. The object was to protect the sea life. The kelp beds in this area afford indispensable resting places for certain species of marine birds and mammals. Accordingly this office does not concur in the recommendation by Mr. Rutter that we make the boundaries of the Monument the low tide mark.

Just what effect the pending Tidelands bill will have on the submerged lands which were purportedly set aside and included as a part of the Monument by the Proclamation we do not know. Was this point taken into consideration in the Department's report on the bill?

Please advise.

(SGD) HERBERT MAIER
Herbert Maier
Acting Regional Director

DOCUMENT 46

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
San Francisco Field Office
180 New Montgomery Street
San Francisco 5, California

January 14, 1958

Memorandum

To: Regional Director, Region Four,
National Park Service

From: Field Solicitor, San Francisco

Subject: Jurisdiction Over the Water Areas of Channel Islands National Monument

In recent discussions with you and members of your staff, I have been requested to answer the following three questions relative to jurisdiction over the waters adjacent to Channel Islands National Monument:

1. May the Park Service enforce Park Service regulations in the water area within one nautical mile of the shore line of Anacapa and Santa Barbara Islands?

2. In the event either the Park Service or its authorized concessioner builds a dock at Channel Islands, will it be necessary, if part of the dock has to be constructed on tidelands, to get permission from the State of California to use such tidelands?

3. If San Miguel Island is added to the Monument may the boundaries of such addition include the area within one nautical mile of the shore line of said island?

As indicated to you orally, there have always been some questions in my mind concerning the ownership

and status of the areas within the proclaimed boundaries of Channel Island National Monument which lie beyond the high water mark of the islands constituting the Monument. By Presidential Proclamation 2825, dated February 9, 1949 (3 CFR, 1949 Supp., (p. 17)), it was proclaimed that

> "subject to valid existing rights, the areas within one nautical mile of the shore line of Anacapa and Santa Barbara Islands, * * * are withdrawn from all forms of appropriations under the Public Land Laws and added to and reserved as a part of the Channel Islands National Monument."

The position of the Department with regard to submerged land off the coast of California at the time the Proclamation was issued appears to have been well summarized in the second paragraph of the Solicitor's Opinion of August 8, 1947, M-34985, subject, Applicability of Mineral Leasing Act to submerged coastal areas *below low tide,* (italics added,) which reads as follows:

> "On September 28, 1945, the President issued Proclamation No. 2667, announcing that the 'United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control.' (10 F. R. 12303.) And by Executive Order No. 9633 of the same date, the resources of the continental shelf were placed under the jurisdiction and control of the Secretary of the Interior 'for administrative purposes, pending the enactment of legislation in regard thereto.' (10 F. R. 12305.) On June 23, 1947, the Supreme Court held in *United States v. California* (Original No. 12) [332 U.S. 19, 67 S.Ct. 1658] that the Federal Government has paramount rights in and power over the 3-mile marginal belt along the coast, 'an incident to which is full dominion over the resources of the soil under that water area, including oil."

Under the law applicable to submerged lands as summarized by the Solicitor above, it appears to me that Proclamation 2825, issued February 9, 1949, enlarging the Channel Islands National Monument to include areas within one nautical mile of the shore line of Anacapa and Santa Barbara Islands under the authority of section 2 of the act of June 8, 1906 (34 Stat. 225, 16 U. S. C. sec. 431) probably effected a reservation of said areas excepting, perhaps, the narrow belt of tidelands surrounding the islands, that is, the land contiguous to the islands between high and low tide.

Subsequently, however, by the Submerged Land Act of May 22, 1953 (67 Stat. 29, 43 U.S.C. secs. 1301-1315) the states were granted ownership and proprietary use of all lands under their navigable waters for a distance of three geographical miles from their coast lines, or to the seaward boundaries as they existed at the time the states became members of the Union. There is a question as to whether the state's seaward boundary is to be measured from the mainland coast or from the outer island coast. In an article in 54 *Columbia Law Review,* 1021-1048, the author, Attorney Aaron L. Shalowitz, Special Assistant to the Director, United States Coast and Geodetic Survey, states on page 1035 that the act itself lacks the necessary criteria from which a definite answer to this question can

be made and that no Congressional intent can be inferred from the legislative history of the measure other than a desire to leave the question where Congress found it.

It appears, however, that regardless of whether the state's seaward boundary is to be measured from the mainland coast or from the outer island coast, there is little question that the three-mile marginal belt around each offshore island will be construed as having been granted to the states since this seems to follow naturally from the fact that the islands are a part of the territory of the state to which the islands belong. See Report of Special Master, *United States v. California*, Supreme Court No. 6, Original October Term 1952. Order filed November 10, 1952, 344 U.S. 872, 73 S.Ct. 163.

Certain tracts of land, including lands presently and actually occupied by the United States under claim of right, were excepted from the submerged land grant to the states. Section 5, 67 Stat. 32, 43 U. S. C. sec. 1313. This raises the question as to whether lands reserved by Presidential Proclamation for national monument purposes come within the scope and meaning of the terminology "lands presently and actually occupied by the United States under claim of right." I am inclined to doubt that such a reservation will be construed as an exception to the grant.

Based on the research I have made of the incomplete source materials available to me, my tentative conclusion with respect to the questions raised by you and members of your staff are:

1. The Park Service no longer has authority to enforce its regulations in the water area within one

nautical mile of the shore line of Anacapa and Santa Barbara Islands.

2. In the event either the Park Service or its authorized concessioner builds a dock at Channel Islands, it will be necessary, if any part of the dock has to be constructed on tidelands or submerged lands, to get permission from the State of California to use such lands.

3. If San Miguel Island is added to the Monument, such addition may not include the area within one nautical mile of the shore line of said island.

Since the questions raised are novel and concern matters presumably of considerable importance to the Park Service, it may be that the Service will wish to present this matter to the Solicitor for a more thorough study and an authoritative ruling on the subject.

/sgd/ Sidney McClellan
Sidney McClellan
Field Solicitor

DOCUMENT 47

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25, D.C.

Feb. 14, 1958

Memorandum

To: Assistant Solicitor, Branch of National Parks

From: Associate Solicitor, Division of Public Lands

Subject: Opinion of Field Solicitor dated January 14, 1958, construing the words "actually occupied" as used in the last clause of section 5(a) of the Submerged Lands Act

This refers to your memorandum of February 6, enclosing a copy of an opinion by Field Solicitor McClellan, San Francisco, California, on the subject "Jurisdiction over the water areas of Channel Islands National Monument". Mr. McClellan concludes that since enactment of the Submerged Lands Act of May 22, 1953 (69 Stat. 29; 43 U. S. C., 1952 Ed. Supp. IV, sec. 1301) the Park Service has no authority to enforce its regulations in the water area within one mile of the shore although that water area was withdrawn, reserved and added to the Channel Islands National Monument by Proclamation No. 2825 of February 9, 1949 (3 CFR 1949 Supp., p. 17). He does not believe that this area comes within the exception from the grant of submerged lands to the State encompassed in the words "lands presently and actually occupied by the United States under claim of right."

Assuming an occupancy of the National Monument including the water area consistent with the occupancy of other national monuments in the same general class,

following the date of the proclamation and its maintenance to and after enactment of the Submerged Lands Act, I am not convinced that the Field Solicitor's opinion is correct.

A reading of all of section 5 of the act makes it fairly clear that "lands" as used in the above-quoted clause, includes "lands underlying the marginal sea." "Occupancy" does not mean residence or actual, physical presence on land although it may include both where a consideration of the context shows that to be the intent. The United States has undoubtedly asserted rights to the water area under "claim of right." See *United States v. California,* 332 U. S. 19, for the basis of such claim. Assuming "occupancy" of the area as above, the sole question seems to be whether it was an "actual" occupancy.

Where land was leased for pasture and the lessee constructed stanchions and constructed and repaired fences on the land and used the land when necessary he was in actual occupancy of the land. *Clouse v. Ruplinger,* 290 N. W. 133 (Wisconsin). Where law provided that an action of ejectment shall be brought against the "actual occupant" of the premises it does not mean a servant holding possession but the person having actual use or possession of the property. *People v. Ambrecht,* 11 Abb. Prac. 97, 101 (N.Y.). "Actual occupancy" is defined as an open, visual occupancy, as distinguished from the constructive possession which follows the legal title. "Actual possession" has practically the same meaning. *Parsons v. Prudential Real Estate Company,* 125 N. W. 523 (Neb.). The use of the word "actual" in "actual occupation and possession" implies that the possession shall be real and not speculative or constructive. *Bennett v. Burton,* 44

Iowa 550, 551. See also *Tumlinson v. Swinney*, 76 Am. Dec. 432 (Ark.) and *McIntyre v. Sherwood*, 22 Pac. 937 (Calif.). "Bona fide occupant" as used in the act of January 18, 1897 (29 Stat. 490) is one who has the "use and possession" and the law does not require that he reside on the land. *Frank Johnson*, 28 L. D. 537. "Own and occupy" does not mean "reside upon." *Oinanen v. Ulvi*, 42 L. D. 56.

The tenor of the above-cited and similar decisions construing the words "occupy" and "actual occupant" show that they are usually defined in context and in the light of the apparent intent of the legislature. Where the conditions are such that residence or even substantially continuous presence on the land cannot be said to be contemplated, it is permissible to construe "actually occupied" as being an open, visual occupancy as opposed to constructive possession through mere ownership of the title. Certainly there is every reason to believe that Congress used the words in that sense. It can hardly be thought to have had land above water in mind. "Filled in, built up, or otherwise reclaimed" lands are separately treated in the same section. Congress well knew that the United States did not assert any claim to tidelands which are periodically covered and uncovered by the movement of the tides. Naturally formed lands permanently above high water were not involved. It follows that the quoted phrase could only refer to submerged lands and that "actually occupied" refers to a type of occupation applicable to such lands, exclusive of occupation for such purposes as navigation, elsewhere in the act provided for.

/sgd/ Charles M. Soller
Associate Solicitor
Division of Public Lands

DOCUMENT 48

(Handwritten original)
State of Florida

Executive Department
Tallahassee Sept*r* 17th, 1846

Whereas the Legislature of this State did by a supplementary Act, approved by the Governor July 24th, 1845, entitled, "An Act supplementary to and extending the provisions of An Act assenting to the purchase by the United States and ceding to the same jurisdiction of certain lands on the Island of Key West for the purposes designated in said Act," approved July 8, 1845, authorize and empower the Governor of this State, upon application made to him in behalf of the United States for the cession to the United States of jurisdiction over lands purchased, acquired or owned by them for military purposes, to cede to the United States exclusive jurisdiction over the land or lands so purchased, acquired or owned, and sought to be ceded; And

Whereas, application has been made by the War Department of the United States to the Governor of this State for the cession of jurisdiction to the United States in and over the Islands in the Gulf of Mexico within the limits of this State known as the Tortugas Islands said Islands having been reserved by the United States for Military purposes:

Now therefore be it Known That I, William D. Moseley, Governor of said State in virtue of the authority vested in me by the said supplementary Act, and in pursuance of the provisions thereof, do for and in behalf of the said State of Florida hereby cede unto the Government of the United States jurisdiction over

the said Tortugas Islands within the limits of this State, Said jurisdiction to be subject to the reservations and limitations contained in the said supplementary Act referred to above.

(SEAL)

In witness whereof I have hereunto set my hand and caused the seal of the State to be thereto affixed this seventeenth day of September, in the year of Our Lord, one thousand eight hundred and forty-six.

/SGD./ W. D. MOSELEY
Governor of Florida

DOCUMENT 49

BUREAU OF THE BUDGET
WASHINGTON

DEC. 8, 1934

My dear Mr. Attorney General:

Herewith is the draft of a proposed Proclamation, presented by the Secretary of Agriculture and the Acting Secretary of the Interior, establishing the Dry Tortugas Keys off the coast of Florida as a national monument by authority of the Act of June 8, 1906 (34 Stat. 225).

This Proclamation has my approval as to form.

There is also enclosed the joint letter of the Secretary of Agriculture and the Acting Secretary of the Interior, dated November 17, 1934, presenting this proposed Proclamation, which states that the Secretary of the Navy has agreed to the transfer of jurisdiction of these Islands.

Very truly yours,
/sgd/ D. W. Bell
Acting Director.

The Honorable,
The Attorney General.

Enclosures:
Joint letter of November 17, 1934
Draft of Proclamation.

THE SECRETARY OF THE INTERIOR
WASHINGTON

Nov. 17, 1934.

The President,
The White House.

My dear Mr. President:

We have the honor to transmit for your consideration a proposed proclamation establishing the Dry Tortugas Keys off the coast of Florida as a national monument by authority of the Act of June 8, 1906 (34 Stat. 225). This will revoke the Executive Order of September 17, 1845, establishing the Dry Tortugas Military Reservation and the Executive Order of April 6, 1908, creating the Tortugas Keys Bird Reservation. It also revokes the Executive Order of September 23, 1912, in so far as it closed the port of Tortugas on Garden Key to navigation, and the Executive Order of February 17, 1930, in so far as it forbids air navigation over the closed port.

The Tortugas Keys are under the jurisdiction of the Navy Department, and are subject to a land use restriction as a bird refuge under the Bureau of Biological Survey which it is not necessary to continue as national monuments are wildlife sanctuaries. The Secretary of the Navy has agreed to the transfer of jurisdiction of the Islands. Fort Jefferson, abandoned as an active military reservation many years ago, is of important historic interest, and the Federal Emergency Relief Administration has agreed to restore the old fort as a winter work relief project as well as part of a broad program for stimulating tourist travel as a means of improving economic conditions in Florida.

We recommend that you approve the proclamation, and establish the Fort Jefferson National Monument for administration by the National Park Service of the Department of the Interior.

Sincerely yours,

(Signed) T. A. Walters
Acting Secretary of the Interior

(Signed) H. A. Wallace
Secretary of Agriculture.

Enclosure 584719

DOCUMENT 50

Department of Justice
Washington
December 29, 1934.

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Proposed Proclamation Establishing the Fort Jefferson National Monument

Herewith is a revised draft of a proposed proclamation presented jointly by the Acting Secretary of the Interior and the Secretary of Agriculture and submitted to this Department by the Acting Director of the Bureau of the Budget under date of December 8, 1934.

The proposed proclamation first revokes certain executive orders in whole or in part relating to the Dry Tortugas group of islands off the coast of Florida and then establishes the area embraced in such group of islands as a national monument designated as the Fort Jefferson National Monument. The Dry Tortugas Military Reservation, which was established by Executive Order of September 17, 1845, and the jurisdiction over which was transferred from the War Department to the Navy Department by Executive Order of April 7, 1900, is included in the proposed monument, and the Secretary of the Navy has agreed to such inclusion.

Establishment of the proposed national monument is clearly authorized under section 2 of the Act of June 8, 1906, 34 Stat. 225 (U. S. Code, Title 16, section 431), which provides in part:

> "The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific

> interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

I have considerably revised the original draft of the proclamation in the interest of form and language but no change in purpose has been made. One change, however, may be mentioned. The original draft of the proclamation revoked in full the Executive Order of September 17, 1845, above mentioned. Upon investigation it was learned that this Executive Order applied to lands other than the Dry Tortugas group of islands. The National Park Service, which will have the supervision, management, and control of the monument, has informally advised me that it is neither necessary nor desirable to revoke the Executive Order in question as to any lands other than those included in the Dry Tortugas group. Hence the proclamation has been revised so as to revoke the Executive Order only in so far as it relates to the Dry Tortugas group of islands to be included in the national monument, and thus effectuate the original purpose of the proclamation.

I recommend that you approve the revised draft of proclamation as to form and legality.

I am also submitting a draft of letter for your use in transmitting the proposed proclamation to the President through the Secretary of State.

Respectfully,
/s/ Angus D. MacLean
ANGUS D. MacLEAN,
Assistant Solicitor General.

DOCUMENT 51

Department of Justice
Washington

December 29, 1934.

Through the Secretary of State.

The President,
The White House.

My dear Mr. President:

I am herewith transmitting a revised draft of a proposed proclamation presented jointly by the Acting Secretary of the Interior and the Secretary of Agriculture and submitted to me by the Acting Director of the Bureau of the Budget under date of December 8, 1934.

The proposed proclamation first revokes certain Executive Orders in whole or in part relating to the Dry Tortugas group of islands off the coast of Florida and then establishes the area embraced in such group of islands as a national monument designated as the Fort Jefferson National Monument.

I have revised the proposed proclamation as to form but no change has been made in its purpose, and, as revised, it has my approval as to form and legality.

Respectfully,

(Signed) Homer Cummings
Attorney General.